

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

MARK HUFFMAN,	)	
	)	
Plaintiff,	)	
	)	1:06-cv-266-DFH-TAB
vs.	)	
	)	
STEPHEN SHARP, et al.,	)	
	)	
Defendants.	)	

**Entry Denying Petition for Attorney's Fees**

Judgement in this civil rights action filed pursuant to 42 U.S.C. § 1983 was entered in favor of the defendants Advanced Correctional Healthcare ("ACH") and Dr. Faisal Ahmed ("Dr. Ahmed"), on April 25, 2007. These defendants then filed a petition for attorney fees pursuant to 42 U.S.C. § 1988. For the reasons explained below, the defendants' petition for attorney's fees (dkt 57) is **denied** and the plaintiff's motion to deny the petition (dkt 63) is **granted**.

**Discussion**

Generally, attorney's fees are not awarded to the prevailing party. However, in an action to enforce civil rights, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees as part of costs . . . ." 42 U.S.C. § 1988(b). Under this provision, "a prevailing defendant must demonstrate that the plaintiff brought this action in subjective bad faith, or that 'the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.'" *Bisciglia v. Kenosha Unified Sch. Dist. No. 1*, 45 F.3d 223, 227-28 (7th Cir. 1995) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)). A lawsuit is frivolous "if it has no reasonable basis, whether in fact or in law." *Roger Whitmore's Auto. Servs. v. Lake County, Ill.*, 424 F.3d 659, 675 (7th Cir. 2005) (quoting *Tarkowski v. County of Lake*, 775 F.2d 173, 176 (7th Cir. 1985)).

In this case, the court ultimately determined that the defendants were entitled to summary judgment as to the claim that they had been deliberately indifferent to his serious medical needs. However, "a weak case does not a frivolous case make," *Roger Whitmore's Auto Servs.*, 424 F.3d at 676, and neither the docket nor the examples provided by defendants demonstrate that attorney's fees are warranted under 42 U.S.C. § 1988(b).

So ordered.



DAVID F. HAMILTON, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

Date: 10/14/2008

Distribution:

Robert Ballard Clemens  
rclemens@boselaw.com

Steven D. Groth  
sgroth@boselaw.com

G. Jayson Marksberry  
jmarksberry@stephlaw.com

Michael D. Rogers  
mrogers@boselaw.com

Ronald J. Semler  
rsemler@stephlaw.com

James S. Stephenson  
jstephenson@stephlaw.com

Mark Huffman  
DOC #125441  
Plainfield Re-Entry Education Facility  
501 W. Main  
Plainfield, IN 46146